



Rural Telephone Coalition

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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WASHINGTON, D.C. 20554

In the Matter of )

Implementation of the Local Competition )  
Provisions in the Telecommunications Act )  
of 1996 )

CC Docket No. 96-98

COMMENTS

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of the

RURAL TELEPHONE COALITION

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## SUMMARY

The Rural Telephone Coalition ("RTC") submits that many of the proposals in the *NPRM* deviate from the Act's direction because they would involve overly specific intervention into the terms of interconnection between carriers. The Act calls for carrier negotiations with very limited additional federal regulation beyond the explicit terms, with limited state review of the resulting voluntary complete or partial agreements. If carrier negotiations fail, states have jurisdiction to arbitrate under more detailed statutory standards and agreement review provisions. There is no need for Commission micromanagement of either the carrier or the state arbitration decisions. The Act states the few, though important, areas in which the Commission rulemaking is authorized.

The *NPRM* correctly places with the States implementation of the rural LEC exemption from incumbent LEC requirements and other modifications and suspensions of specific interconnection terms. The states can best examine the particular facts to reflect rural conditions. All bona fide interconnection requests should be specific and binding on the requesting carrier.

Reliance on state and carrier decision making is sound policy because the transition to competition is largely experimental, and state experimentation will help. States also have the task of designating carriers eligible for universal service mechanisms and retain other authority to meet the varied needs of rural areas.

The interconnection provisions of the Act apply to competitors in a LEC's service area and not to arrangements between noncompeting LECs in adjacent areas or the current access relationship between long distance carriers and LECs. Congress did not intend to disrupt co-

provision of services like EAS but instead made clear that rural LECs' customers should benefit from infrastructure sharing. Infrastructure sharing arrangements are apart from common carrier and nondiscrimination considerations.

Contrary to the discussion above, if the Commission nevertheless decides to adopt specific pricing rules, the approach should recognize a myriad of issues including mixes of customer class, service characteristics, subscriber density, traffic concentrations, differences in technological approaches to local network coverage, the unique challenges of service to rural areas, and the need to address embedded cost and ongoing cost to maintain a ubiquitous network. Carriers that own and operate facilities must continue to receive cost recovery revenues including the proper contribution provided by access charges. Analysis of avoided costs for purposes of resale pricing must consider differences between different LECs.

Forward-looking costing and pricing methods utilizing long-run incremental cost ("LRIC") analysis are only one tool among other necessary considerations. If prices were to be mandated at marginal cost, revenues would fall short of total costs, and compensation would ignore the need to provide for ongoing network expansion and upgrades and would not satisfy the Act's requirement for nondiscrimination and a reasonable profit. Additionally, LRIC would require significant adjustment to assure that the most efficient provider is allowed to charge a corresponding price, a requirement of competitive markets.

LRIC pricing, by itself, would not recognize recovery of costs that are joint and common with respect to multiple services or components. Consideration of embedded costs will be necessary, particularly for high cost, rural LECs for which common costs may constitute a large percentage of overall cost recovery burden. The Commission should note the lessons that the

“efficient component pricing rule” teaches in that incremental cost must also include opportunity costs. In any event, available theory, at best, yields a range of prices bounded by a ceiling and floor within which competitive providers would set prices. Detailed federal rules should not attempt to decide on the perfect, single answer within the range. Instead, any definitive conclusions, if any, should be left to the States.

Besides the theoretical considerations, pricing must also consider other costs beyond LRIC. The cost of under-depreciated plant, the prohibition on existing LECs to exit markets or requirements to enter markets, asymmetrical regulation, last-resort capacity guarantor, and universal service must be factored into price.

The RTC also submits that pricing should not be based on mathematical models of network component costs. These so-called proxy methods have been examined elsewhere and are not sufficiently developed to rely on at this point in time.

Reciprocal compensation for the transport and termination of local calls should be based on mutual compensation principles and negotiations without the need for specific pricing results. Proposals such as bill and keep do not comply with the necessary principles in all cases because they may not consider differences in costs involved from one network to another.

Finally, the RTC offers a summary set of recommendations regarding technical issues associated with interconnection. These recommendations emphasize the need to recognize differences between small and large switches, low-volume and high-volume local networks, and the operational methods of different LECs. Any rules prescribing specific terms and conditions regarding interconnection, unbundled network elements, and collocation should include the necessary flexibility to accommodate these differences.

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RURAL TELEPHONE COALITION

The Rural Telephone Coalition ("RTC") files these Comments in response to the *Notice of Proposed Rulemaking* released in this docket on April 19, 1996 ("NPRM"). This proceeding is examining implementation of Section 251 and 252 of the Telecommunications Act of 1996 ("Act").

The Rural Telephone Coalition is comprised of the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA), and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO).

I. THE COMMISSION CANNOT IMPOSE DETAILED FEDERAL INTERCONNECTION REGULATIONS UNDER THE 1996 ACT'S MANDATE FOR BROAD RURAL EXCEPTIONS AND CARRIER NEGOTIATIONS, SUBJECT PRIMARILY TO STATE AUTHORITY UNDER CIRCUMSCRIBED FEDERAL STANDARDS.

A. The Basic Statutory Framework for Interconnection Contemplates Limited Regulation, Primarily under State Authority.

The 1996 Act establishes a new framework and division of state and federal authority with respect to interconnection to provide exchange and exchange access services. As the *NPRM* recognizes (¶ 37 ), the new law combines interstate and intrastate interconnection under a single regime. However, contrary to the *NPRM*'s suggestion ( ¶ 26 ), that new regime is placed almost entirely under state responsibility. Even state jurisdiction is limited, however, by the initial reliance on (a) largely deregulated negotiations to reach individualized interconnection agreements in general and (b) broad rural exceptions.

The "new model" developed in conference for interconnection<sup>1</sup> as part of the plan to open markets to competition reflects the deregulatory, marketplace-based philosophy of the legislation as a whole. It first sets a general requirement for all telecommunications carriers to interconnect and observe certain standards to facilitate interoperability. Next, the law adopts two further tiers of interconnection requirements, imposing five more specific requirements on all LECs and six much more detailed requirements on incumbent LECs.

To await marketplace demand for interconnection, all but the most general requirements come into effect only after a LEC receives a bona fide request for interconnection. A bona fide request is plainly meant to be specific and tied down to firm plans for actual use of the requested

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<sup>1</sup> Managers' Statement at 121.

arrangements.<sup>2</sup> At that point, the primary marketplace tool for establishing interconnection arrangements -- good faith negotiations between incumbent LECs and new entrants -- comes into play, and carriers have almost unlimited freedom to agree on terms and conditions. In spite of this clear intent to leave great flexibility for negotiations, the *NPRM* (§ 31) states the Commission's tentative intention to "narrow[ ] the range of permissible results" in order to "limit the incumbent's bargaining position" and the results of negotiation. This theme, encountered throughout the *NPRM*, flies in the face of the legislative choice of a deregulatory interconnection framework where government intervention would become necessary only upon the failure to reach a voluntary negotiated agreement with a requesting carrier, which need not adhere to even the statutory requirements of subsections 251(b) and (c). Rules that would limit small incumbent LECs' bargaining position do not make sense in negotiations with large carrier interconnectors.

If voluntary negotiations do not settle all the requesting carrier's interconnection terms in the initial deregulatory step, the Act first makes room for minimal regulatory intervention, through state mediation (§ 252(a)(2)) to help the negotiating carriers reach agreement without regulatory compulsion. If negotiations are still unavailing, the new law provides each carrier the option of seeking state arbitration, but only for any interconnection term not already settled by negotiation.

Section 252 requires the state commission to impose certain statutory standards when it acts as compulsory arbitrator, including both general compulsory compliance with the statute and

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<sup>2</sup> The Managers' Statement (p. 121) explains that "the duties imposed under new section 251 (b) make sense only in the context of a specific request from another telecommunications carrier or any other person who actually seeks to connect with or provide services using the LEC's network." The incumbent carrier requirements also refer to a "requesting carrier" at several points. Finally, a state's duty to rule on a rural telephone company's exemption arises only upon a "bona fide request for interconnection."

applicable FCC rules and separately stated statutory pricing standards, set forth in Section 252(d).<sup>3</sup> The law makes it clear (e.g. Section 252 (c)-(d)) that the rate-setting standards in section 252 form the basis for state arbitration. However, the *NPRM* (§§ 26-32) asserts this Commission's authority to spell out pricing and many other standards in order to control negotiations, prevent state differences, guide state approval decisions and help the Commission if it ever needs to act under Section 252(e)(5) for a state that fails to perform its statutory interconnection duties. The *NPRM* finds pervasive federal involvement necessary even to guide the district court in reviewing state arbitration and agreement approvals.

To illustrate, the *NPRM* proposes (a) a single unified nationwide set of standards for the states to apply under Section 252(b) in arbitration of agreements and under Section 252(f) in passing on Bell Operating Company statements of generally available interconnection terms; (b) unified national rules for just, reasonable and nondiscriminatory interconnection terms, potentially narrowing the permissible range of state determinations down to the level of detail involved in setting maintenance, installation standards and requiring liquidated damages for failure to meet network performance measures; © national standards for a minimum list of technically feasible points of interconnection and binding presumptions about feasibility based on other carriers' networks; (d) precise national standards for equal interconnection quality; and (e) uniform national collocation standards.

The Act is almost entirely devoid of authority for tight federal control over the decentralized state negotiation, mediation and arbitration mechanism. In stark contrast to the virtually unlimited federal implementation role claimed by the FCC, Section 251 explicitly states which of

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<sup>3</sup> Sections 252© and (d) provide the standards for compulsory state arbitration.

its interconnection requirements Congress intends the Commission to implement by adopting regulations. There are only a few: number portability requirements (§ 251(b)(2)); standards for the state to follow in imposing resale limitations pursuant to Section 251(c)(4); determinations about what network elements should be available under the unbundling mandate in Section 251(c)(3); overseeing administration of the nation's numbering system (Section 252(e)); enforcing existing exchange access and interconnection requirements under subsection (g); making determinations about treating additional carriers as incumbent LECs (Section 251(h)(2)); and retaining its full authority under Section 201.

Many, if not most, of the subjects on which the Commission is considering adopting uniform national rules in the *NPRM* involve determinations not on this list of implementation and other determinations entrusted to it by Section 251. For example, particularly clear evidence of how Congress intended to divide federal and state responsibility appears in the resale requirements of Section 251(c)(4). Section 251(c)(4) specifies how incumbent LECs must resell their services to competitors. The section expressly authorizes Commission regulations about the permissible scope of state resale limitations allowed under subparagraph(B). In contrast, Congress does not provide for any FCC role in subparagraph(A), where Congress enacts a statutory pricing standard for resale. Under the Act's structure for interconnection, therefore, Congress has left the details of pricing for resale arrangements with incumbent LECs to be developed through either (a) carrier negotiations -- which do not have to implement the statutory "wholesale" resale requirement -- or (b) compulsory state arbitration -- which must apply the

statutory resale standard under Section 252(d)(3).<sup>4</sup> Notwithstanding the Act's decision vehicle -- state application of a statutory standard -- the *NPRM* devotes several pages to resale (§§ 172 to 188), largely focusing on questions, alternative interpretations and proposals that deal with the wholesale and retail pricing standards and requirements not committed to federal determination.

The Commission's responsibility under Section 251 is limited to completing "all actions necessary to establish regulations to implement the requirements of this section."<sup>5</sup> Since the statute has carefully detailed these "necessary actions" for the FCC by expressly authorizing the few rulemaking duties stated in Section 251, the Commission should strictly limit its rulemaking activities to implement Section 251. Restraint will let the marketplace work first through carrier negotiations and then let the states carry out their arbitration responsibilities under Section 252 in the law.<sup>6</sup>

Section 252, which sets procedures, standards and limits for state involvement in interconnection determinations, envisions even less Commission involvement. Indeed, there are only two indications that Commission rules play a role in state arbitration and approval of

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<sup>4</sup> Section 252(d)(3) specifically requires state commission arbitration "to determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."

<sup>5</sup> Section 251(d)(1)(emphasis added).

<sup>6</sup> That Congress contemplated only limited rulemaking determinations for the Commission in connection with the Act's interconnection provisions is also borne out by the brief, six-month deadline Congress gave the Commission to implement Section 251. That time is sufficient for the Commission to incorporate the given statutory standards into its rules and adopt the rules Congress explicitly authorized, but not for the pervasive federal government management of interconnection launched by the *NPRM*. The entire industry need not be engaged in an exercise to adopt rules that may never come into play.

interconnection agreements. The references are consistent with the narrow federal implementation authority contemplated by Section 251, discussed above. The sole statutory instructions to the states regarding Commission rules in Section 252 reference compliance with “the regulations prescribed by the Commission pursuant to Section 251.”<sup>7</sup> Thus, Section 252 does not provide the Commission any additional rulemaking role with respect to the state negotiation, arbitration and approval process.

Nor is there any indication that Congress expects the states to bow to any pervasive federal requirements. Thus, subsection 252(c), which enacts the standards for arbitration, generally directs the states to ensure compliance with the Commission’s Section 251 rules. However, the subsection deals separately with pricing and requires state arbitration only to “establish any rates for interconnection, services, or network elements according to subsection (d)” of Section 252. Subsection (d) in turn prescribes pricing standards for determinations by a State Commission and contains no provision for Commission implementing or interpretive rules. In fact, the only active involvement in the mediation, arbitration and agreement process specified for the Commission by Section 252 is to act in the place of a state that fails to perform its statutory role.<sup>8</sup>

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<sup>7</sup> Section 252 (c)(1) and (e)(2)(B).

<sup>8</sup> The Commission’s suggestion ( ¶ 19 ) that the extensive rules and interpretations proposed in the *NPRM* are necessary for it to exercise its default duty if a state fails to act cannot justify the scope of this proceeding. Should a state fail to act, the Commission could then consider how other states had resolved issues under similar local conditions and act accordingly. Its potential default obligation cannot confer authority to control state arbitration determinations or carriers’ negotiating latitude.

As noted, the Commission says ( ¶ 23 ) that guidance for federal district courts in reviewing state decisions provides one reason for expansive FCC rules. However, the statutory instructions for district court review of state interconnection actions in Section 252(e)(6) do not support this rationale: The law says only that an aggrieved party may obtain a district court's determination about "whether the agreement or statement meets the requirements of section 251 and this section."

Thus, the Commission should step back from the *NPRM's* expansive proposals for uniform standards and rules to limit the states in applying Sections 251 and 252, and adopt substantive regulations only where Congress expressly so directed. It should also step back from efforts to "influence" the deregulatory marketplace function enacted through the carrier negotiation process. To the extent that Congress intended substantive implementation by this Commission, it has said so in the Act. The only rational conclusion from the language and structure of the interconnection sections is that Congress did not intend to confer any other rulemaking and policy development role on the Commission. Consequently, the Commission should streamline its interconnection proceeding by weeding out all the questions and proposals for which Congress has not explicitly sought FCC determinations. The "new model for interconnection" established by the Act reserves those issues either to the states or, through flexible negotiation, to the marketplace.

**B. The Act's Interconnection Requirements are Specific Enough to Foster Local Competition Without Intrusive Commission Micromanagement.**

In addition to the statutory limitations on the scope of Commission involvement in writing rules for interconnection discussed above, there is simply no need for the comprehensive breadth

and detail of the Commission's interconnection proposals. The three tiers of interconnection requirements specified in Section 251 are sufficiently specific in their own right, especially for incumbent LECs subject to Section 251(c).<sup>9</sup> Even given the deregulatory leeway provided by voluntary carrier negotiations, the requirements in Section 251(b)-(c), together with the state standards for reviewing negotiated agreements, compulsory arbitration of unsettled issues and exemptions, modifications and suspensions provide would-be competitors with a formidable arsenal of ways to benefit from the existing public switched network. Indeed, even without the *NPRM*'s proposals to inject more regulation, the statutory framework already gives competitors virtually unprecedented control over incumbent LECs' private operations, business plans and assets. There is no justification for additional Commission micromanagement beyond what Congress chose in adopting Sections 251 and 252.

Therefore, even where the 1996 Act authorizes Commission interconnection rules -- with respect to number portability, numbering administration, designating additional carriers as incumbent LECs, identifying elements to be unbundled and guidance as to permissible state resale limitations -- the Commission should adopt only general, minimally intrusive rules. Such regulatory restraint would be in keeping with the deregulatory and pro-competitive philosophy of the Act and the statutory interconnection framework.

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<sup>9</sup> The RTC agrees with the *NPRM* (§ 260) that it is within state authority to decide whether to continue a rural LEC's exemption after a bona fide interconnection request under Section 251© or to grant modifications or suspend Sections 251(b) or © for any but the nation's largest LECs.

C. **Principal Reliance on State Commission Expertise and Limited Statutory Standards for the Transition to a New Interconnection Regime is Sound National Policy.**

The 1996 Act breaks new ground for national telecommunications policy by imposing local competition as the basic law of the land.<sup>10</sup> However, as noted above, where not inconsistent, the statute provides for the authority of the states and even their laws and regulations to remain in force.<sup>11</sup> In leaving ample discretion to the states, subject to the detailed requirements and standards in the Act itself, Congress has balanced the need for general national standards and for flexibility for each state to use its knowledge of the local conditions within its boundaries in applying the statutory standards. Each state can thus experiment within the statutory framework, which is already tailored for several different categories of carriers. State flexibility is wise because the new paradigm of local competition and diminished regulation is itself an experiment. It is too early for the Commission to dictate state implementation choices in detail, even by choosing to impose one or another state's policy on all the others. There are enormous differences among and within states, and the approach that works in New York or Illinois could be devastating in New Mexico. Thus, it is sound public policy to let states try different approaches. Indeed, the *NPRM* canvases the actions of various states looking for solutions to impose nationwide (see, e.g., ¶¶ 69, 183 ). At this early stage in the transition to local competition, more benefit will come from multiple state experiments, with less risk to customers and affected carriers.

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<sup>10</sup> Section 253.

<sup>11</sup> See, Sections 251(d)(3); and 253(b).

**D. State Commissions Have Clear Authority Over Standards For Terminating Rural Carrier Exemptions and Securing Suspensions and Modifications.**

The Commission asks for comment on whether it can and should establish some standards that would assist the states in satisfying their obligations under Section 251(f) of the 1996 Act.<sup>12</sup> The Commission correctly interprets the intent of Congress when it states that “[W]e tentatively conclude that the states alone have authority to make determinations [under section 251(f)] ”.<sup>13</sup> The RTC is in complete agreement with the Commission on this point. It is each individual State commission, and not the FCC, that has the jurisdiction to develop the standards which serve as the procedures for termination of the rural LEC exemption, or the granting of suspensions or modifications.

As an example of standards for assisting states in implementing Section 251(f), the Commission asks whether it should establish what would constitute a “bona fide” request.<sup>14</sup> Under the law, the bona fide request triggers the State commission proceeding for termination of the rural telephone company exemption from the interconnection requirements under Section 251(c). The request may also act as a trigger prompting petitions to the State commission by rural carriers for a suspension or modification of the interconnection obligations under Section 251(b) or (c). A bona fide request is the first step to bringing local competition to an area through interconnection. Thus, it seems appropriate that the State commission have the authority over all of the procedures associated with the process, including the determination as to that

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<sup>12</sup> *NPRM* at ¶ 260.

<sup>13</sup> *NPRM* at ¶ 261. The order has apparently erroneously referenced Section 271(f).

<sup>14</sup> *Id.*

which triggers the process -- the bona fide request.

In addition to the common sense behind allowing the state to develop the standards for the exemptions, suspensions, and modifications, the 1996 Act is the basis for the lawfulness of this deference to the states.

Section 251(d)(3) states that:

In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that -- (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of this section; and © does not substantially prevent implementation of the requirements of this section and the purposes of this part (emphasis added).

The development of standards by State commissions for the purpose of satisfying their obligations under Section 251(f) meets all three of the tests set out in Section 251(d)(3). State standards, especially those which embody a bona fide request, would most likely be established through a regulation, order, or policy which establish the access and interconnection obligations of LECs. As mentioned previously, the first step to termination of the exemption and the granting of suspensions and modifications is the establishment of whether a bona fide request has been made.<sup>15</sup> Exercise of state authority in establishing standards would be consistent with the requirements of Section 251, for it would facilitate the interconnection process. Finally, state determination of standards certainly would not prevent the implementation of Section 251. Just the opposite, state developed standards, such as for the definition of the bona fide request, would serve as the very framework for implementation. Therefore, the FCC has properly concluded that

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<sup>15</sup> On p.121 of the Manager's Report, Congress noted that the duties imposed under Section 251(b) make sense only in the context of a specific request from another carrier or any other person who actually seeks to connect with or provide services using the LECs network.

the states alone have authority to make determinations under 251(f).<sup>16</sup>

Section 251(f) addresses, *inter alia*, the assessments that a State commission must make in order to terminate the rural LEC exemption from, and grant suspensions and modifications to, the interconnection requirements. Specifically, Section 251(f)(1)(A) states that those interconnection requirements placed on incumbent LECs (under Section 251(c)) will not apply to a rural telephone company until it has received a bona fide request for interconnection, services, or network elements and the state has determined that the request is not unduly economically burdensome, is technically feasible, and is consistent with the universal service provisions of the Act (under Section 254). Section 251(f)(2) states that a LEC with fewer than two percent of the nation's subscriber lines may petition a State commission for a suspension or modification from any of the interconnection requirements imposed on all LECs (under Section 251(b)) as well as those additional obligations imposed only on incumbent LECs (under Section 251(c)). The State commission must grant the petition if it determines that suspension or modification is necessary to avoid any one of the following: (1) a significant adverse economic impact on users of telecommunications services generally; (2) imposition of a requirement that is unduly economically burdensome; or (3) imposition of a requirement that is technically infeasible. In addition, the suspension or modification must be consistent with the public interest, convenience, and necessity.

With their enhanced roles as protectors of universal service and the public interest, it is fully consistent with the Act that states would formulate the standards for implementing the congressionally mandated bases for termination of the exemption and approval of suspensions and

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<sup>16</sup> The RTC recognizes that the Commission is given exclusive jurisdiction over number portability requirements under Section 251(b)(2) and numbering administration by Section 251(e).

modifications. Indelibly intertwined with states' jurisdiction over interconnection is their prominent role in the furtherance of universal service and the protection of consumers. The 1996 Act gives states the authority to impose, on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.<sup>17</sup> Furthermore, in those markets served by rural LECs, a State commission can require a competitor, with some exceptions, to meet requirements for designation as an eligible telecommunications carrier.<sup>18</sup> Moreover, the states are given the authority to determine which carriers will be given the eligible carrier designation. In fact, in rural areas, the state has the authority to decline designation of an additional eligible carrier unless designation would be consistent with the public interest, convenience, and necessity.<sup>19</sup>

Finally, it is notable that throughout the entire subsection on exemptions, suspensions, and modifications, the Act makes reference to the FCC only once. Section 251(f)(1)(B) states: "Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations" (emphasis added). All the stages of the State commission process preceding this mandatory compliance with Commission regulations are devoid of any reference to the FCC. If Congress

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<sup>17</sup> 1996 Act at Section 253(b).

<sup>18</sup> Section 214 (e)(1) of the 1996 Act provides that in order for a carrier to achieve state designation as an eligible carrier to receive universal service funding, it must offer service throughout its designated service area and advertise the availability of such service.

<sup>19</sup> 1996 Act at Section 214(e)(2).

had meant to engage the FCC in the process of establishing standards for the termination of the exemption or the securing of modifications and suspensions, it would have done so.<sup>20</sup>

Throughout the 1996 Act, there is an underlying recognition that all states are different and each state is in a unique position to know what is necessary to provide and protect service in its jurisdiction. Because the elements that must be satisfied for termination of the rural LEC exemption and the granting of suspensions and modifications are closely tied to universal service and the protection of consumers, Section 251(f) is a clear-cut case where Congress intended the states to have sole authority for its implementation -- including the establishment of standards. The RTC urges the FCC to defer to the states the responsibility of establishing standards that will fairly represent the needs of both urban and rural states.

## II. THE INTERCONNECTION REQUIREMENTS APPLY ONLY TO ARRANGEMENTS BETWEEN COMPETING LOCAL EXCHANGE AND EXCHANGE ACCESS PROVIDERS IN THE SAME SERVICE AREA.

### A. The Act Does Not Apply to Existing LEC-to-LEC Agreements Pertaining to Non-Competing Services in Their Own Service Areas.

Another area where the *NPRM* suggests an interpretation of the interconnection provisions that would jeopardize consumers, LEC and state interests, and improperly constrain state flexibility involves the Act's effect on existing agreements and agreements between non-competing incumbent carriers. The *NPRM* (§ 48) seeks comment on whether existing agreements in general must be filed and whether one party may force renegotiation. The *NPRM* also takes note (§§ 157, 170-71) of arguments that the interconnection requirements of Sections 251 and 252

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<sup>20</sup> This is further evidenced by Congress' specific grant of authority to the FCC over numbering administration. 1996 Act at Section 251(e). This indicates that when Congress intended the FCC to have jurisdiction over a particular matter, the Act clearly states such a preference.

extend beyond requested arrangements to compete with another LEC to provide local and access service in the same area to include arrangements between neighboring LECs for services in their own areas.

The Commission realizes (§ 170 ) that applying Section 252(c)(2) to agreements between neighboring non-competing LECs could force neighboring LECs to make new -- or even existing -- agreements with each other public and provide the same terms and conditions to other carriers. Therefore, the *NPRM* asks whether the interconnection requirements should be interpreted to apply to non-competing neighboring LECs.

Interpreting the Act to cover non-competing neighboring LECs has no basis in the law or legislative history. The purpose of the legislation is to promote competition and thereby allow the marketplace to take over for regulation. Arrangements between LECs that operate in separate areas do not fit within these legislative purposes.

Extending the intended scope of the Act could have consequences at odds with what Congress intends. The conferees expressly stated that: "Nothing in this section [251] should be construed as requiring any parties to renegotiate any agreements currently in existence unless the new Commission regulations under this section require such negotiation."<sup>21</sup> Thus, widespread immediate disruption of carrier arrangements is plainly not automatically required by the Act

Moreover, since Section 2(b) of the prior Act remains in effect and only inconsistent state requirements are at risk under Section 251 (d), the new interconnection requirements cannot be "construed" to preempt state regulation of arrangements between non-competing contiguous LECs or to authorize FCC regulations to replace current local and intrastate interconnection

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<sup>21</sup> Managers' Statement at 123.

arrangements.

It would do violence to the intent of Congress to require renegotiation of non-competing LEC agreements so as to deprive consumers in an outlying “bedroom” community of existing, beneficial Extended Area Service arrangements and rates for calls to the city where they work, shop and receive medical care. Consumers probably would not even gain a competitive service from such a strained interpretation in many cases, since the city would be the likely target of competition. Losing the local service arrangement that reflects their community of interest would injure the interests of the small community’s residents and businesses. Moreover any carrier wishing to compete with the urban LEC in the urban area would, under the new law, have available all the interconnection opportunities available to the urban LEC, its affiliates and other competitors in that service area.

Given the potential pitfalls of reading the law too loosely, the Commission’s “reading of Section 251(c)(2) in context” to apply only to interconnection to compete with an incumbent LEC (¶ 171 ) is the only interpretation that is consistent with the Act, the intent of Congress and a reasonable balancing of competitors’ and consumers’ interests.<sup>22</sup> The raison d’etre of the interconnection provisions is to open local exchange and other services to competition, not to outlaw beneficial co-provision relationships among or between adjacent providers. Giving a competitor the same terms and opportunities as its competitive rival is all Congress intended to

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<sup>22</sup> To the extent that a LEC competes with a neighboring LEC in that rival’s service area, the interconnection provisions for competitive service would, of course, govern that portion of the two LECs’ intercarrier dealings.

do, and all the FCC or the states should implement.<sup>23</sup>

**B. The Commission's Obligation to Implement Infrastructure Sharing Precludes the Application of Sections 251 and 252 to Non-Competing Neighboring LECs.**

An especially compelling reason why the Commission must hold that sections 251 and 252 do not apply to arrangements between many non-competing neighboring LECs is that Congress has provided another method for LEC-to-LEC arrangements when one is a "qualified" carrier under Section 259(d). That section requires the Commission to adopt rules, within one year of the Act's enactment, requiring an incumbent LEC, upon request, to "share" with a "qualified carrier" public switched network infrastructure, technology, information, and telecommunications facilities and functions. A qualified carrier includes any state-designated "eligible" carrier (*i.e.*, carrier eligible for universal service high cost recovery mechanisms) that lacks economies of scope or scale. Section 259 also (1) specifies that such sharing must not be treated as a common carrier service (§ 251(b)(3)), (2) requires that the qualifying eligible carrier receive just and reasonable terms and conditions that give it the benefit of the larger LEC's scale and scope economies (§ 251(b)(4)), and (3) prohibits use of shared infrastructure to compete in the providing LEC's serving area (§ 251(b)(6)). Although the infrastructure sharing agreement must be made public (§

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<sup>23</sup> Many of the agreements between neighboring incumbent LECs that would be jeopardized by sweeping existing agreements or contiguous non-competing LECs are already in effect, often under state order. The RTC understands that Ameritech is trying to pressure smaller LECs into renegotiating or seeking unnecessary state exceptions for their EAS agreements, under the threat of making what it characterizes as a bona fide request. Ameritech may fear that an expansive reading would provoke requests by its competitors for similar terms for their dissimilar competitive service in its territory. The states should reject the argument that the Act applies to such agreements. If they are not ready to follow this rational interpretation of the Act, the states could at least grant all carriers qualifying under the applicable size limitations an interim suspension under section 251(f)(2). A suspension is necessary to protect customers, carriers, and the public interest from loss of service, impairment of contractual rights and other adverse impacts that will be averted by waiting until implementation of the interconnection provisions is complete.

251(b)(7)), nondiscrimination is not required. The intention and effect of this provision is to enable non-competing (most likely contiguous) LECs to make unique arrangements with each other on terms that need be available only to LECs that qualify.

Congress could not rationally have adopted this provision, designed to maintain traditional non-common carrier access and interconnection arrangements among co-providers of the backbone public switched network, if it had intended Sections 251 and 252 to apply to all agreements between non-competing neighboring LECs instead. Reading the law to give effect to the two different sets of relationships clearly contemplated by the two different provisions -- that is, local exchange competition versus non-competing infrastructure sharing -- requires the Commission to interpret sections 251 and 252 as applicable only to interconnection to compete in the same service area.

### III. PRICING RULES, IF ADOPTED, MUST BE RATIONAL AND CONSISTENT WITH UNIVERSAL SERVICE.

#### A. Pricing Rules, If Any, Should Allow States Flexibility.

Section 252(c)(2) of the Act mandates that State commissions shall "establish any rates for interconnection, services, or network elements. . . " in arbitration of interconnection agreements. The intent of the Act is to encourage "good faith" negotiations between parties for interconnection at the local level. Accordingly, if the Commission insists on prescribing pricing standards for all states, it must allow flexible rules that take into account the myriad of different classes of customers, geographic characteristics, population densities, and technologies. Additionally, the Commission must bear in mind the unique economics of remote, rural areas by considering embedded costs that stem from rural LECs' obligations as carriers of last resort.